

RESOLUTION NO. 08-528

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH MICROFLEX, INC. TO AUDIT SALES TAX AND PROVIDE SUMMARY AND DETAILED REPORTS

WHEREAS, the City of Black Diamond is desirous of receiving all of the sales tax due to the City of Black Diamond each month; and

WHEREAS, Microflex, Inc. will audit Washington State sales tax and notify the State of remittance errors for the city of Black Diamond, ensuring the City collects all the sales tax revenue to which the City is entitled; and

WHEREAS, it is the City's desire to receive monthly detailed and summary analysis reports provided by Microflex; and

WHEREAS, the reports will assist the City of Black Diamond with budgeting and analysis of economic development, and

WHEREAS, Microflex, Inc is qualified, willing and able to perform the above-mentioned services;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RESOLVES AS FOLLOWS:

Section 1. The Mayor is authorized to execute a contract with Microflex, Inc to provide sales tax audit and reporting services in form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 10TH DAY OF JULY, 2008.

City of Black Diamond


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

TAX AND LICENSE AUDIT CONTRACT

THIS CONTRACT is made by and between Microflex, Inc. a Washington State corporation (hereinafter "Microflex") and The City of Black Diamond (hereinafter "Client") the parties hereto. In consideration of the covenants contained herein, the parties AGREE as follows:

Section 1: Scope of Work. Microflex will provide a tax audit and discovery program in an attempt to recover additional tax revenue for Client. These services will include the following items.

- (a) Reports: On a monthly basis Microflex will provide the following reports.
 - (1) R00 Control Totals
 - (2) R01 Account Analysis
 - (3) R02 Account Analysis By Group
 - (4) R03 Group Analysis by Size
 - (5) R033 Group Changes by Category
 - (6) R035 Category Changes
 - (7) R04 Activity Audit Report
 - (8) R08 Budget Status Report
- (b) Use tax: Microflex will perform the following use tax service:
 - (1) Examine private party vehicle and boat sales to ensure use tax is properly allocated.
- (c) Microflex duties herein will be performed primarily using computer technology, and will be in large part dependent on cooperation of the Client, including the Client supplying the necessary data and resources requested by Microflex.
- (d) Microflex will perform the following aspects of audits:
 - (1) Using computer technology to identify potential missing taxes.

Section 2: Data to be supplied by Client. Client will provide Microflex within 20 days of request the following data in a computer readable format:

- (a) Faxed copies of the forms sent to the Washington Department of Revenue and Washington Department of Licensing.

Section 3: Client Responsibilities: The Client will provide Microflex with the following:

- (a) Data described in Section 2 hereof.
- (b) An accurate map, to scale, detailing and large enough to identify and clearly show the Client's boundaries and jurisdiction (e.g., City limits).
- (c) Any other information reasonably required from Client for Microflex to perform its duties.

(d) Client will cooperate with Microflex in any reasonable and necessary request.

Section 4: Audit Fees. Microflex will be compensated on a percentage of revenue recovered basis as follows:

- (a) Reports are provided for an annual fee of \$1,200.
- (b) Incorrectly coded use tax accounts discovered -- 22% of the actual amount of tax recovered.

Section 5: Reimbursable Expenses. There are no additional reimbursable expenses.

Section 6: Payment Terms. Invoices are generally submitted monthly to the Client and are due within 20 days after receipt. Audit Fees are due upon the Client receiving the new revenue discovered by Microflex. Past due amounts shall accrue interest at the rate of 1.5% per month.

Section 7: Audit Termination. The audit services can be terminated with 30 days advance written notice by either party. There shall be no further fees paid after termination date.

Section 8: Confidentiality. In the course of fulfilling its responsibilities under this proposal, Microflex may have access to confidential taxpayer information from various sources. Microflex agrees not to disclose such information in any form to any party without the prior written consent of the Client, or as may otherwise be required by legal process. Notwithstanding the above provision, Client authorizes Microflex to distribute gross amounts collected on behalf of Client, and Client referral contacts, for marketing and promotional purposes of Microflex.

Section 9: Indemnification. Microflex will indemnify and hold harmless the Client, its officers, agents and employees from and against any and all liabilities, costs, damages, lawsuits, including the cost of all reasonable attorney fees, to the extent of its negligent performance of Microflex's responsibilities, but subject to the limitation of liability provisions elsewhere in this Contract.

Section 10: No Guarantees/Limitation of Liability. Microflex will put forth its best efforts to identify as much missing, unreported or under-reported tax and license revenue as possible, which will depend on the Client's cooperation among Client's other duties herein. However, Microflex does not guarantee that it will identify or recover 100% or any other percentage of missing or uncollected tax, license or other revenue. In no event will Microflex be liable for its failure to identify or collect missing or wrongfully reported taxes and license fees. Notwithstanding anything herein to the contrary, Microflex's maximum liability under this Contract for breach of contract or any other legal theory alleged against it is the return of Audit Fees paid to it by Client, or the sum of \$10,000, whichever is less.

Section 11: Computer Software. Client agrees to execute Microflex's applicable software licensing and/or other agreements should Microflex install its software on Client's computers.

Section 12: Notices. Notices may be addressed to the parties' representatives executing this Contract. A party may change its representative(s), or its address by written notice to the other party. Notices may be hand delivered, or mailed with pre-paid postage, or faxed or emailed if there is proof of receipt.

Section 13: Law and Venue. This Contract shall be governed by the laws of the State where the Client is located, and venue of any matter arising out of this Contract shall be maintained in the County where the Client is located.

Section 14: Attorney Fees. Should legal action be necessary to enforce or interpret this Contract, the prevailing party shall be entitled to its reasonable fees, costs and expenses, including expert witness fees.

Section 15: Severability. If any portion of this Contract is invalid, the remaining portions shall remain in full force and effect.

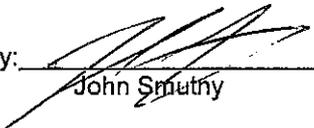
Section 16: Execution of Contract. This Contract may be executed and transmitted via facsimile or other electronic means. This Contract will become binding on the date of last execution hereon. This Contract may be executed in counter-parts, when both read together the Contract shall constitute one and the same agreement. The person signing this Contract represents that he or she has full and proper authority to do so and to bind the party which they are representing.

Section 17: No construing Against Drafter. This Contract in its finalized form is the result of the combined efforts of the parties, and any rule of construction that ambiguities are to be construed against the drafting party, shall not apply.

Section 18: Complete Contract. This document contains the full Contract between the parties, and supercedes all prior representations and promises with respect to the subject matter of this Contract. This Contract may only be changed by a signed writing by the parties.

Microflex, Inc.
2201 SW 152nd Street
Seattle, Washington 98166

DATE: 7/17/08

By: 
John Smutny

City of Black Diamond
25510 Lawson St
Black Diamond WA 98010

DATE: 7-11-08

By: 

Name: HOWARD BOTTS

Title: MAYOR